

II. REMARKS

A. Examiner's Amendment.

On April 2, 2008, applicant's attorney had a telephone interview with the examiner to discuss a proposed new claim and arguments regarding the cited art. The examiner recommended making the claim more specific to the on-line auction

B. Status of the Claims.

Claims 1 through 36 are canceled. Claim 37 is newly presented for consideration. Support for claims 38 may be found in the prior claims 5-10 and Specification page 10, line 9 through page 12, line 6. Claims 1-36 were cancelled in this amendment solely to facilitate expeditious prosecution of new claim 37. Applicant reserves the right to pursue claims including the subject matter encompassed by cancelled claims 1-36, and additional claims in one or more continuing applications.

C. Why the elements of new claim 37 distinguish over the cited art.

New claim 37 emphasizes that it is for an on-line auction. According to the Merriam-Webster on-line dictionary (see <http://www.merriam-webster.com/dictionary/auction>), an auction is "a sale of property to the highest bidder." The concept of auction is commonly known and such a definition is consistent with the ordinary usage of the word. Because an auction is a competition between bidders the bidder must compete because the sale will go the "highest" bidder. It is also within common knowledge that a person bidding on a property at an auction does not want to pay more than a property is worth at an auction, and so the act of bidding requires choosing a bid that is less than the value of the property but high enough to win the bidding process. Thus an aid in choosing a bid would be to have some indication of the value of

the property. That is the invention claimed in new claim 37. In particular, new claim 37 recites “using a bid advisor program cooperating with an on-line auction program and a web browser, providing to a bidder, who is participating in the on-line auction and who is bidding on a product using a computer with an on-line capability, a competitive cost of the product by” Support for these limitations may be found in the specification page 1, line 17-18, FIGS. 4 through 8, page 10, line 9 to page 12, line 6.

Applicant submits that new claim 37 distinguishes over the prior art for at least the following reasons.

The cited art fails to teach “responsive to the bidder indicating that the bidder wants a pricing hint determining whether a user wants assistance with a bid,” because Jacoby is silent to these limitations. The Examiner previously alleged that Jacoby taught “determining whether a user wants assistance with a bid.” Office Action p.2 (referring to the Final Office Action dated Jun. 25, 2007, which cites to Jacoby [0011], [0058]-[0061], and [0072]-[0073]). Applicant notes the Examiner did not address these limitations in the rejection of the claim. Final Office Action dated Jun. 25, 2007, p.2. Jacoby’s system provides brokers with information about sellers and buyers of particular goods. Jacoby [0011]. Hence, Jacoby’s broker is its user, but broker’s do not “bid” on seller’s products. Rather, brokers buy the products from sellers and resell the products to the buyers at quoted prices. *See* Jacoby [0003]-[0005]. In other words, instead of many buyers bidding on one seller’s product (like an on-line auction), Jacoby’s brokers buy from sellers at a quoted price and sell to buyer’s at a quoted price without “bidding.” Thus, Jacoby fails to teach a “bid,” as set forth in the claim.

The Examiner also cites to Khan as teaching an online auction, but combining the teachings of Khan with Jacoby would change Jacoby’s principle of operation. Jacoby’s system

provides brokers with information about sellers and buyers of particular goods. Jacoby [0011]. Hence, Jacoby's broker is its user, but broker's do not "bid" on seller's products. Rather, brokers buy the products from sellers and resell the products to the buyers at quoted prices. *See* Jacoby [0003]-[0005]. In other words, instead of many buyers bidding on one seller's product (like an on-line auction), Jacoby's brokers buy from sellers at a quoted price and sell to buyer's at a quoted price without "bidding." As such, the principle of operation of Jacoby's sales model is a seller/broker/buyer sales model. Auction sales models are seller/buyer models with no broker between the seller and the buyer, i.e., the buyer pays the seller directly with no broker in between. Hence, to incorporate Khan's teachings of online auctions would change Jacoby's seller/broker/buyer sales model to a seller/buyer sales model, which is improper. *See* M.P.E.P. § 2143.01 V.

Furthermore, Jacoby is wholly silent to "determining whether a user wants assistance with a bid." Jacoby's system provides information including reports, but fails to teach that it's system determines whether a broker wants assistance.

Should the Examiner maintain the rejection, Applicant respectfully requests that the Examiner fully discuss how these limitations are met by the cited art.

Claim 37 also recites "identifying a given number of similar products." The Examiner alleges Jacoby teaches these limitations, reading Jacoby's teachings of "Market Prices" as meeting these limitations. Office Action p.2 (referring to the Final Office Action dated Jun. 25, 2007, which cites to Jacoby [0011], [0058]-[0061], and [0072]-[0073]). The combination of cited fails to teach these limitations because Jacoby fails to teach a "given number" of products. Jacoby teaches providing "Market Prices" information, such as, "a price basis code, a product description, price dates (i.e., effective from date, effective to date, update date), the current

market price, and information identifying the broker agent who last updated the information” (Jacoby [0059]), yet Jacoby is silent to the number of products Jacoby’s “Market Prices” for which information is identified.

Claim 37 also recites “calculating the market value based on the given number of similar products.” The Examiner alleges Jacoby teaches these limitations, reading Jacoby’s teachings of “Market Prices” as meeting these limitations. Office Action p.2 (referring to the Final Office Action dated Jun. 25, 2007, which cites to Jacoby [0011], [0058]-[0061], and [0072]-[0073]). The combination of cited fails to teach these limitations because Jacoby is silent to “calculating,” as set forth in the claim. Jacoby teaches providing “Market Prices” information, such as, “a price basis code, a product description, price dates (i.e., effective from date, effective to date, update date), the current market price, and information identifying the broker agent who last updated the information” (Jacoby [0059]), yet Jacoby is silent to calculating a market price from its “Market Prices” information.

Claim 37 also recites “identifying a retail value at which the item is currently being publicly offered for sale.” The Examiner alleges Jacoby teaches these limitations. Office Action p.2 (referring to the Final Office Action dated Jun. 25, 2007, which cites to Jacoby [0011], [0058]-[0061], and [0072]-[0073]). The combination of cited fails to teach these limitations because Jacoby is silent to a retail value. Jacoby teaches providing “Market Prices” information and “Pricing History” information (Jacoby [0059]-[0060]), yet Jacoby is silent to providing a retail value for a product. The cited portions of Khan are not relied upon and not teach these limitations.

Claim 37 also recites “bid assistance based upon historical price, ... bid assistance based upon a market value, [and] ... bid assistance based upon a current offering.” The Examiner

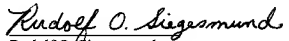
alleges Jacoby teaches these limitations. Office Action p.2 (referring to the Final Office Action dated Jun. 25, 2007, which cites to Jacoby [0011], [0058]-[0061], and [0072]-[0073]). Jacoby teaches providing “Market Prices” information and “Pricing History” information (Jacoby [0059]-[0060]), yet is silent to providing current offering information. The cited portions of Khan are not relied upon and not teach these limitations.

Thus, the claim comprises limitations that are outside the scope of the combination of cited art and the cited art was improperly combined for the rejection. Therefore, Applicant respectfully requests that the rejection be withdrawn.

CONCLUSION

Applicant submits that new claim 37 is now in condition for allowance.

Respectfully submitted,



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